

BOARD OF APPEALS CASE NO. 5207

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BEFORE THE

APPLICANTS: Randall & Lynn Lott

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit an existing
6 foot high fence; 813 Woodmont Court, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: February 20, 2002

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Aegis: 12/26/01 & 1/2/02

Record: 12/28/01 & 1/4/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Randall C. Lott & Lynn R. Lott, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence higher than 4 feet in an R3 District.

The subject parcel is located at 813 Woodmont Court, Joppa, Maryland 21085, in the First Election District, and is more particularly identified on Tax Map 69, Grid No. 1C, Parcel 138, Lot 54, in the subdivision of Magnolia Farms. The parcel contains approximately 0.348 acres, more or less.

The Applicant, Randall C. Lott, appeared and testified that he and the Co-Applicant, Lynn R. Lott, are the owners of the subject property. He indicated that he had read the Department of Planning and Zoning's Staff Report, and that he had no changes or corrections to the information contained therein. The witness described his lot as an unusual pie-shaped parcel, with three road frontages. The subject property is the only lot in the neighborhood with three road frontages. The property is improved by a two-story dwelling with a wooden deck across the rear, and an attached garage. Other improvements include a blacktop driveway, and a frame shed located in the right rear corner of the lot.

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The front property line borders on Woodmont Court, and the back yard has frontages along both Trimble Road and Fort Hoyle Road. As required by the Harford County Code, there is a 10-foot buffer yard along Trimble Road, containing an earth berm with pine trees planted on top. The majority of the rear yard is fenced with a 4-foot solid board fence. Across the rear of the property, along Trimble Road and Fort Hoyle Road, the fence increases to 6 feet in height. Despite the unusual shape of the rear property line, the fence had to be built in a straight line across the rear of the property for site distance reasons. The six-foot section of the rear fence located outside of the buffer yard is the subject of this request.

The Applicant testified that when the fence was constructed, he and the Co-Applicant believed that there were landscape buffers along both Trimble Road and Fort Hoyle Road. They, therefore, thought that the fence could be six feet high along both Trimble Road and Fort Hoyle Road, because fences are permitted to be 6 feet in height in required buffer yards. They subsequently learned that there is no buffer yard along the Fort Hoyle Road portion of their rear property line.

The witness referred to the site plan (Staff Report Attachment 2), which shows that the existing fence is four (4) feet high along the side yards. The height increases to six (6) feet across the rear of the property, along Trimble Road and Fort Hoyle Road. In order to comply with the provisions of the Code, the fence would have to drop down to four (4) feet in height for the short distance along Fort Hoyle Road where there is no landscape buffer. According to the Applicant, this reduction in height in one small portion of his rear yard would be cosmetically unappealing. The witness testified that the fence acts as a sound barrier from the extensive traffic on Fort Hoyle Road. The witness also stated that prior to the construction of the fence across the rear of his lot, his yard was used as a shortcut for neighborhood children entering the development, and that the children drove three wheelers across the back portion of his property.

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Mr. Lott testified that his property is located in the subdivision of Magnolia Ridge, and that there are similar fences in the neighborhood, including other 6-foot wooden fences located along Trimble Road. He does not believe that the granting of the requested variance would have any adverse impact on neighboring properties. He introduced a letter (Applicants' Exhibit 2) from the Magnolia Farms Homeowners Association. In that letter, the Homeowners Association stated that it has "no problem with the fence located unique 813 Woodmont Court" and that "[t]he fence has been up for a year and we have never received a complaint regarding the look of fence, the size of the fence or the view around the fence from anyone in community."

The Department of Planning and Zoning recommended approval of the requested variance in its February 13, 2002 Staff Report, finding that the property is unique because it has frontage along three roads. The Department also found that granting of the requested variance will not adversely impact adjacent properties, because the fence does not impact traffic on Trimble or Fort Hoyle Roads.

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Randall C. Lott & Lynn R. Lott, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence more than the maximum 4 foot in height in an R3 District.

Section 267-24B(1) of the Harford County Code provides that:

- (1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access."

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Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is a corner lot with three road frontages, and hence subject to three front yard setbacks. It is the only lot in the Magnolia Ridge subdivision with three road frontages. Thus, the first prong of the Cromwell test has been met.

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It must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because if the property was not subject to three front yard setbacks the Applicant would not need a variance to retain the existing fence. If the variance is not granted, the Applicant will be denied property rights commonly enjoyed by others in his neighborhood. Other property owners within Magnolia Ridge, and Harford County generally, have greater flexibility in the construction of fences on similarly sized lots. The fence also acts as a sound barrier, cutting down on traffic noise from busy Fort Hoyle Road, and provides privacy for the Applicants. Prior to its construction, the rear of their property was used as a shortcut for pedestrians entering the Magnolia Ridge subdivision. The additional two-foot fence height across the rear of the property deters this invasion of Applicants' privacy.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. The fence is compatible with other fences in the neighborhood. There are other properties along Trimble Road with six-foot high wooden fences. In addition, the existing fence does not interfere with site distance at the intersection of Trimble Road and Fort Hoyle Road.

The Hearing Examiner recommends approval of the Applicants' request, subject to the condition that the Applicants amend the existing permit to reflect the correct fence height.

Date: MARCH 7, 2002

Rebecca A. Bryant
Zoning Hearing Examiner